

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

No. CR 2008-1339

**MOTION FOR NEW FINDING
OF PROBABLE CAUSE**

(Oral Argument Requested)

Pursuant to Rule 12.9(a) of the Arizona Rules of Criminal Procedure, Defendant Steven DeMocker requests that this Court remand this matter to the grand jury for a new finding of probable cause. This Motion is supported by the following Memorandum and Points of Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

Rule 12.9 of the Arizona Rules of Criminal Procedure provides that a grand jury proceeding may be successfully challenged if the defendant was denied a "substantial procedural right." Ariz. R. Crim. P. 12.9. Substantive due process in grand jury proceedings "requires the use of an unbiased grand jury and a fair and impartial

1 presentation of the evidence.” See *Crimmins v. Super. Ct.*, 137 Ariz. 39, 41, 668 P.2d
2 882, 884 (1983) (en banc) (inaccurate testimony contributed to denial of defendant’s
3 substantial procedural rights).

4 A “primary security to the innocent against hasty, malicious and oppressive
5 persecution,” the grand jury “serves the invaluable function in our society of standing
6 between the accuser and the accused . . . to determine whether a charge is founded upon
7 reason or was dictated by intimidating power or by malice and personal ill will.” *Wood*
8 *v. Georgia*, 370 U.S. 375, 390 (1962). To “do its job effectively, the grand jury must
9 receive a fair and impartial presentation of the evidence.” *Maretick v. Jarrett*, 204 Ariz.
10 194, 197, 62 P.3d 120, 123 (2003) (defendant denied due process right to a fair and
11 impartial grand jury proceeding).

12 Particularly significant in this process is the role of the prosecutor. “The
13 prosecutor acts not simply as an advocate, but as a ‘minister of justice,’ who assists the
14 jurors in their inquiry.” *Maretick*, 204 Ariz. at 197, 62 P.3d at 123, quoting Ariz. R.
15 Sup. Ct. 42, ER 3.8 cmt. Indeed, the prosecutor’s office bears a “particularly weighty
16 duty not to influence the jury because the defendant has no representative to watch out
17 for his interests” before the grand jury. *State v. Hocker*, 113 Ariz. 450, 454, 556 P.2d
18 784, 788 (1976) *disapproved on other grounds by State v. Jarzab*, 123 Ariz. 308, 599
19 P.2d 761 (1979).

20 Mr. DeMocker was denied substantive due process in having an indictment
21 returned against him obtained with the use of false, misleading, irrelevant and
22 prejudicial testimony and was denied his right to have the State present evidence to the
23 grand jury in a fair and impartial manner. *Crimmins*, 137 Ariz. at 41, 668 P.2d at 884.

24
25 **I. THE STATE’S SOLICITATION OF FALSE AND MISLEADING**
26 **TESTIMONY REQUIRES A REMAND FOR A NEW FINDING OF**
27 **PROBABLE CAUSE.**

1 In *Nelson v. Royston*, 137 Ariz. 272, 669 P.2d 1349 (Ct. App. 1983), the Arizona
2 Court of Appeals reviewed the propriety of a grand jury proceeding during which a
3 witness provided misleading testimony. Noting that the prosecutor knew of the
4 misleading character of the testimony, the court recognized that there is “a duty of good
5 faith on the part of the prosecutor with respect to the court, the grand jury and the
6 defendant.” *Id.*, 137 Ariz. at 276, 660 P.2d at 1353. Incumbent in that duty is the
7 obligation to correct false testimony, even where the State has not solicited such
8 testimony. *See Napue v. Illinois*, 360 U.S. 264, 269 (1959). A prosecutor’s failure to
9 do so, the Arizona appeals court held, necessarily results in a denial of due process and
10 requires a remand for a new determination of probable cause. *Nelson*, 137 Ariz. at 277,
11 660 P.2d at 1354; *see also Maretick*, 204 Ariz. at 198, 62 P.3d 124.

12
13 **1. Failure to Disclose Exculpatory Laboratory Reports Requires**
Remand.

14 The State’s most startling violation of Mr. DeMocker’s rights in the grand jury
15 presentation comes from what it did not tell the grand jury. The State did not tell the
16 grand jury about significant exculpatory forensic evidence. The State did not tell the
17 grand jury about more than 50 items of evidence that were seized from Mr. DeMocker
18 and tested for blood and DNA with negative results. The State did not tell the grand jury
19 about the multiple items of evidence from the scene of the crime that were tested for
20 Mr. DeMocker’s blood, fingerprints and DNA – all with negative results. And, the
21 State did not tell the grand jury about the identification of an unknown male’s DNA on
22 four key items of evidence at the crime scene.

23 To begin, Detective John McDormett was asked by Mr. Mark Ainley if there was
24 any DNA evidence found on the phone next to the victim, and McDormett told the
25 grand jury that he did not know the results of the testing. (GJ42:21-43:9). Detective
26 Doug Brown later testified that with respect to the DNA on the phone, “the minor is
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1 inconclusive” and that James Knapp (who lived in a guest house on the property where
2 the body was discovered) had been excluded. (GJ63:11-15). What both witnesses
3 failed to tell the grand jury is that DNA from an unknown male was found on this item
4 of evidence. (Bates No. 000332). This is especially significant since the victim was
5 allegedly speaking on this phone to her mother at the time she was attacked. The State
6 had this information on September 11, 2008 from the Arizona DPS crime lab, over a
7 month and a half before the grand jury presentation. This evidence, combined with the
8 unknown male DNA in the mixture of blood found at the scene, underneath the victim’s
9 fingernails, and on light-bulbs in the victim’s laundry room is substantial evidence of an
10 unidentified male presence at the crime scene.

11 In further withholding exculpatory forensic evidence, when asked about DNA
12 found on the light-bulbs in the victim’s laundry room, where the State’s theory places
13 Mr. DeMocker during the crime, Detective McDormett stated that he believed the DNA
14 testing was inconclusive and that his office was awaiting a report, but deferred to
15 Detective Brown. (GJ41:3-18). Detective Brown then testified that the DNA results
16 were “inconclusive as to anyone suppose [sic] to be at the house.” (GJ63:7-10). Again,
17 both witnesses failed to tell the grand jury that DNA from an unknown male was also
18 found on two of the light-bulbs from the laundry room. (Bates No. 000358). This
19 information was provided to the Yavapai County Sheriff’s Office on October 6, 2008,
20 again well before the October 31, 2008 grand jury presentation. This evidence is
21 significant, given that the theory the State presented to the grand jury was that these
22 lights were unscrewed by Mr. DeMocker, whom they assert was hiding in the laundry
23 room before attacking the victim. Specifically, Detective McDermott told the grand
24 jury “[w]e believe Mr. DeMocker was in the laundry room and had gotten into the
25 house while Carol was out for her run,” (GJ54:21-24), but did not tell them that some
26 other unknown male’s DNA was on the unscrewed light bulbs in that same room.

1 Continuing in the same manner, the State failed to advise the grand jury of
2 material and exculpatory evidence in their possession regarding unknown male DNA
3 found in blood on a door handle at the scene. Although Detective McDormett testified
4 in front of the grand jury that blood evidence was collected from a door handle at the
5 crime scene, (GJ19:25-20:1), and Detective Brown testified that Mr. DeMocker was
6 excluded from this blood, (GJ64:1-5), both witnesses again failed to inform the grand
7 jury that there was an unknown male's DNA found in the blood on this door handle.
8 (Bates No. 000332). This information was provided to the Yavapai County Sheriff's
9 Office on September 11, 2008 by the DPS lab, over a month and a half before the grand
10 jury presentation and further supports the inference of an unidentified male presence at
11 the crime scene.

12 Further unknown male DNA was also found under the victim's fingernails.
13 Although Detective McDormett divulged this to the grand jury, he also explained it
14 away by testifying that "those clippers were not sterilized." (GJ42:14-20). However,
15 police reports indicate that Karen Gere with the Medical Examiner's Office notified
16 detectives on August 4, 2008, over two months before the grand jury testimony, that
17 although the clippers were not single use, "they would usually clean them after being
18 used." (Bates No. 001941). Detective McDormett's testimony that the clippers were not
19 sterilized to explain away the fourth instance of unknown male DNA at the crime scene
20 was misleading and likely false.

21 Not only were these substantial exculpatory omissions made, but no testimony
22 was presented to the grand jury about the extensive searching and testing of Mr.
23 DeMocker's effects made during the investigation. In addition to searching Mr.
24 DeMocker's home twice, deputies also searched his car, his daughter's car, his office in
25 Prescott and his office in Phoenix, a storage unit, a rental car, a rental apartment he and
26 his daughter used in Scottsdale, his laundry, clothes, briefcase, washing machine, the
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1 drain from his washing machine, bathroom sink drains, the tub, lint from his dryer, his
2 bike, bike pump, and virtually every shoe he owned. No incriminating DNA or blood
3 evidence of any kind was ever found as a result of all of this searching and testing.
4 Most importantly, no information about any of this testing was presented to the grand
5 jury. In addition to the evidence seized from Mr. DeMocker, at least 51 additional
6 pieces of evidence were taken from the victim's home and there was no blood,
7 fingerprint or DNA evidence of Mr. DeMocker's found in or on these items. None of
8 this exculpatory information was ever shared with the grand jury. Similarly, the grand
9 jury was not told that James Knapp's thumbprint was found on a document inside a
10 magazine seized during a search of the victim's residence. (Bates No. 00255).

11 The failure to provide this exculpatory information is a clear violation of Mr.
12 DeMocker's substantive due process rights and created an unfair, biased and prejudicial
13 presentation of the evidence to the grand jury. Substantive due process "requires the
14 use of an unbiased grand jury and a fair and impartial presentation of the evidence."
15 *Crimmins*, 137. Ariz. at 41, 668 P.2d at 884. Remand is required to meet the
16 substantive due process right guaranteed to Mr. DeMocker under Ariz. R. Crim. P. 12.9
17 and the Arizona and United States Constitutions.

18
19 **2. Remand is Required Based on Omitted Testimony Regarding**
20 **Exculpatory Shoe Evidence.**

21 In addition to the exculpatory forensic information kept from the grand jury
22 described above, the State failed to tell the grand jury that the shoe tread patterns they
23 located at the scene were not consistent with any shoes recovered from Mr. DeMocker.
24 Although Detective McDormett testified that shoe prints were found that led from the
25 bike tracks to the rear of the victim's property (GJ18:19-24), he did not tell the grand
26 jury that the Yavapai County Sheriff's Office took every one of Mr. DeMocker's shoes
27 from his home and apartment and did not find any tread pattern consistent with those
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1 found behind the victim's house. Furthermore, the detectives failed to advise the grand
2 jury that they seized Mr. DeMocker's clip less bike shoes which specifically fit the kind
3 of pedals on the bike he was riding and which leave a very distinctive track that was not
4 found anywhere near the scene. Substantive due process in grand jury proceedings
5 "requires the use of an unbiased grand jury and a fair and impartial presentation of the
6 evidence." *Crimmins*, 137. Ariz. at 41, 668 P.2d at 884 (inaccurate testimony
7 contributed to denial of defendant's substantial procedural rights). Here again, the State
8 office deprived Mr. DeMocker of his right to due process through its failure to present
9 this exculpatory evidence.

10
11 **3. Misleading Testimony Regarding Tire Track Comparison Requires**
12 **Remand.**

13 Detective McDormett falsely testified to the grand jury that the bike tire tracks
14 found on the trail behind the victim's property were "consistent with tread patterns
15 found on Mr. DeMocker's bike." (GJ18:14-16). Detective McDormett knew, however,
16 that the DPS lab found that a conclusive association could not be made between the tire
17 tracks identified and photographed at the scene of the crime and Mr. DeMocker's bike
18 tires. Their report, sent to the Yavapai County Sheriff's Office on September 16, 2008,
19 over a month before Detective McDormett testified to the grand jury, concluded that
20 "due to the limited clarity and proper scale in the images, a more conclusive association
21 was not made." (Bates No. 000311). To tell the jury, in the face of this information
22 from DPS, that the bike tracks near the scene were "consistent with" Mr. DeMocker's
23 bike tires was misleading. DPS also notified detectives on August 19, 2008, over two
24 months before the grand jury testimony, that DPS could not verify if the rear tracks
25 were made by a deflated tire. (Bates No. 001943). This information was not shared
26 with the grand jury either. This was significant because Mr. DeMocker told detectives
27 his rear tire was flat and when his bike was seized, the rear tire was flat. In fact,
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1 Detective McDormett testified falsely that the bike track evidence near the victim's
2 home indicated a bike with a rear flat tire, contrary to what DPS had advised. "Again,
3 the evidence found, physical evidence found at the scene reference the bike tracks
4 indicates a mountain bike with a rear flat tire." (GJ52:5-7). Detective McDormett's
5 omission of the contradictory scientific information and misleading testimony about the
6 tire tracks violated the State's "duty of good faith on the part of the prosecutor with
7 respect to the court, the grand jury and the defendant." *Nelson*, 137 Ariz. at 276, 660
8 P.2d at 1353. The testimony was not corrected and resulted in a denial of Mr.
9 DeMocker's right to due process. A remand for a new determination of probable cause
10 is therefore required. *Id.* at 277, 660 P.2d at 1354; *see also Maretick*, 204 Ariz. at 198,
11 62 P.3d at 124.

12
13 **4. False Statements Regarding Weather Conditions and Effects on**
14 **Allegedly Incriminating Tire Tracks Require Remand.**

15 Detective McDormett testified falsely to the grand jury about several issues
16 affecting the shoe and tire marks in the area behind the victim's property. First,
17 Detective McDormett testified that the only impressions behind the victim's property
18 were the tire tracks, shoe tracks and the victim's shoe tracks and that these were all
19 fresh impressions, saying that "there was an absence of other impressions." (GJ19:13-
20 17). This is inconsistent with reports taken by other officers on the scene. Sergeant
21 Candice Action noted in her report that there were "numerous" vehicle and tire prints in
22 the area of Glenshandra Drive. (Bates No. 000017). Deputy Matthew Taintor's report
23 contains the same observation of "numerous footprints, hoof prints and what appeared
24 to be a bicycle tire track." (Bates No. 000020). Sergeant Winslow also noted that there
25 were numerous foot tracks alongside bike tracks "apparently made by YCSO
26 personnel." (Bates No. 000025).

1 Second, Detective McDormett testified that he had been told that it rained earlier
2 in the day. (GJ19:12). Online records show however, that .04-inch of rain fell between
3 5 and 6:30 pm the night before – 25 to 27 hours before the murder, not "earlier in the
4 day." (See
5 [http://www.wunderground.com/weatherstation/WXDailyHistory.asp?ID=KAZPRESC1](http://www.wunderground.com/weatherstation/WXDailyHistory.asp?ID=KAZPRESC10&month=7&day=1&year=2008)
6 [0&month=7&day=1&year=2008](http://www.wunderground.com/weatherstation/WXDailyHistory.asp?ID=KAZPRESC10&month=7&day=1&year=2008)).

7 Mr. Ainley knew or should have known from police reports and publically
8 available information that these representations about the time of the rain and the
9 number of foot tracks in the area were false and did nothing to correct them. Mr. Ainley
10 violated his "duty of good faith ... with respect to the court, the grand jury and the
11 defendant." *Nelson*, 137 Ariz. at 276, 669 P.2d at 1353. Incumbent in that duty is the
12 obligation to correct false testimony, even where the State has not solicited such
13 testimony. *See Napue*, 360 U.S. at 269. A prosecutor's failure to do so, the Arizona
14 appeals court held, necessarily results in a denial of substantive due process and requires
15 a remand for a new determination of probable cause. *Nelson*, 137 Ariz. at 277, 660 P.2d
16 at 1354; *see also Maretick*, 204 Ariz. at 198, 62 P.3d at 124.

17
18 **5. Misleading Evidence Regarding the Source of Victim's Injuries and**
19 **Irrelevant Evidence Regarding a Golf Club Head Cover Requires**
Remand.

20 The grand jury was told that the victim died from at least seven blows to the head
21 and that Dr. Keen and Dr. Fulginiti both "mentioned that these injuries were consistent
22 with a golf club." (GJ 29:23-30:2). However, Dr. Fulginiti, notes in her report that she
23 was asked to examine a Callaway # 7 golf club and concluded only that it "cannot be
24 ruled out as the cause of the defects." (Bates No. 000549). Dr. Fulginiti did not
25 conclude that these injuries were "consistent with" a golf club as testified to by
26 Detective McDormett. Additionally, Dr. Fulginiti told Detective Brown, who testified
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1 before the grand jury, that other golf clubs and objects should be tested to show the
2 differences in impact damage. (Bates No. 001939). This caveat was not shared with the
3 grand jury. The grand jury was also told that a golf club that matched a golf club head
4 cover seen at Mr. DeMocker's home during the first search warrant and later recovered,
5 "was consistent with one that could cause those injuries." (GJ40:9-17). This testimony
6 was conjecture, based on speculation, based on assumption and was both irrelevant and
7 prejudicial. Remand is therefore required.

8 Detective McDormett testified that a golf club head cover was photographed in
9 the initial search of Mr. DeMocker's home (GJ28:8-10); that it was black, made of
10 nylon and belonged to a number seven wood (GJ28:1-6); that it was gone from the shelf
11 during the second search and officers could not find it (GJ31:12-23); that the golf club
12 head cover was moved (GJ32:17-18); that Mr. DeMocker gave the club cover to his
13 attorney (GJ36:15-17 & GJ39:16-22); that Mr. DeMocker must have moved the head
14 cover before the second search (GJ36:17-37:3); that the head cover was later found in a
15 car (GJ37:4-5); that the golf head cover must have been placed in the car after
16 detectives left the second time (GJ37:5-7); that the shelves where the head cover had
17 been were straightened up prior to the second search (GJ37:14-16); that Mr. DeMocker
18 gave a golf club to the victim a week before she was killed for a garage sale (GJ40:1-4);
19 that detectives bought a golf club that went with the head cover (GJ40:12-17); and that
20 a club similar to the purchased golf club could have caused the injuries. (*Id.*)
21 Presentation of this evidence was irrelevant, misleading and wholly prejudicial to Mr.
22 DeMocker.

23 First, detectives do not know if a golf club caused the victim's injuries and did
24 not follow the advice of Dr. Fulginiti to test other potential weapons. (Bates No.
25 001939). Nor did the State advise the grand jury of Dr. Fulginiti's recommendation of
26 further testing. Second, detectives do not know what kind of golf club caused the
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1 victim's injuries or even if they were in fact caused by a golf club. Furthermore,
2 detectives do not know what kind of golf club was allegedly given to the victim by Mr.
3 DeMocker for her garage sale. (GJ48:19-49:1). Also, detectives do not know if the golf
4 club that Mr. DeMocker allegedly gave to the victim was of a type that caused the
5 injuries to the victim. (GJ40:9-12 and GJ48:19-49:1). Nor did detectives know if the
6 golf club they speculated caused the injuries could withstand the type of impact if it was
7 used as they asserted. (GJ49:10-22). The police told the grand jury that Mr. DeMocker
8 hid the cover because he knew it was incriminating, but failed to tell the grand jury that
9 they had been advised by Mr. DeMocker's daughter's boyfriend that Mr. DeMocker had
10 explained that he had found the cover in a friend's car after the police had left his home
11 for the second time on the day after the murder, and that he had given it to his attorney
12 for safekeeping. (Bates No. 00628). And, of course, no golf club alleged to be
13 connected to the murder has been recovered. (GJ40:21-23).

14 As a result of this irrelevant and prejudicial testimony, Mr. DeMocker was
15 denied his right to have the State present evidence to the grand jury in a fair and
16 impartial manner and remand is required. Substantive due process in grand jury
17 proceedings "requires the use of an unbiased grand jury and a fair and impartial
18 presentation of the evidence." *See Crimmins*, 137 Ariz. at 41, 668 P.2d at 884.

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20 **6. Omitted Testimony Regarding Prior Support to the Victim Requires**
21 **Remand.**

22 Detective McDormett testified that Mr. DeMocker was to begin making alimony
23 payments of \$6,000 per month beginning July 1, and that he had not made that payment
24 as of July 2, when the victim was killed. (GJ44:21-25). The Detective reiterated this
25 testimony a second time. (GJ26:10-12). When a grand juror asked about prior support
26 payments made to the victim, Detective Brown testified that Mr. DeMocker had
27 previously provided support to the victim, but stated that he did not know the amount of
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1 those prior payments. (GJ66:7-14). In fact, it was well known to the State that Mr.
2 DeMocker had been paying virtually all of the victim's living expenses for the five
3 years they had been separated and that this amount was, in fact, more than the \$6,000 he
4 would be paying per month after the divorce. This information is easily available from
5 the divorce filings between Mr. DeMocker and the victim, and from Mr. DeMocker's
6 bank and credit records, which detectives have seized. Detectives also failed to mention
7 that the victim actually owed Mr. DeMocker money on the day she died as a result of
8 the divorce decree in an amount greater than his alimony payment, as is reflected in a
9 message obtained by the police from Mr. DeMocker to the victim on the day of her
10 death. This is significant because the grand jury was led to believe that Mr. DeMocker
11 killed the victim to avoid paying her alimony that had just become due when, in fact, he
12 had been making support payments to her for a period of five years, largely without a
13 court order.

14 These omissions are exceptionally significant where the State also gave the grand
15 jury entirely speculative, seriously prejudicial information about Mr. DeMocker's
16 alleged financial fraud, telling the panel that "there were allegations that Mr. DeMocker
17 was – was defrauding, reference taxes," (GJ35:17-19), even while admitting they do not
18 have the information required to allege such fraud, "So it's an ongoing process. We're
19 still going through records." (GJ56:3-15). While asking the jury to infer that Mr.
20 DeMocker was committing tax fraud and explaining that they do not have any financial
21 reporting to back that up, the State admits that it has had the relevant financial
22 information it claims demonstrates "evidence of tax cheating" for almost four months.
23 (GJ66:15-24). This was all done to convince the grand jury that Mr. DeMocker had a
24 motive to kill the victim – to avoid making alimony payments and to silence her on the
25 issue of his alleged fraud. A grand juror expressed discomfort with the State's evidence
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1 in this regard. "I'm uncomfortable with this." (GJ57:6). In response, the State simply
2 repeated the allegations.

3 The State also told the grand jury about the existence of two insurance policies
4 on the life of the victim without telling them that Mr. DeMocker had contacted the
5 insurance company after the death and advised them that he did not want to receive the
6 proceeds, but wanted the money to go directly to his two daughters. (Bates Nos.
7 001961-1962).

8 These omissions and the provision of this misleading information about Mr.
9 DeMocker's financial obligations to the victim violated the State's "duty of good faith
10 on the part of the prosecutor with respect to the court, the grand jury and the defendant."
11 *Nelson*, 137 Ariz. at 276, 660 P.2d at 1353. The testimony was not corrected and
12 resulted in a denial of Mr. DeMocker's substantial due process. A remand for a new
13 determination of probable cause is therefore required. *Nelson*, 137 Ariz. at 277, 660
14 P.2d at 1354; *see also Maretick*, 204 Ariz. at 198, 62 P.3d at 124.

15
16 **7. False Testimony Regarding Mr. DeMocker's Statements Regarding**
His Bike Ride Require Remand.

17 Detective John McDormett of the Yavapai County Sheriff's Office testified
18 falsely to the grand jury on four occasions that Mr. DeMocker allegedly confessed to
19 detectives that he was riding his bike "across the street" from the victim's
20 neighborhood. (GJ22:12-14). While Detective McDormett also described the bike trail
21 as 1.5 miles away, he falsely stated that "[a]n offshoot of this trail veers towards
22 Williamson Valley and towards Glenshandra, and Glenshandra runs into the gate which
23 is what I referenced about the trail or path that runs behind the victim's house."
24 (GJ22:17-21). And yet again, when asked by a grand jury member about any
25 incriminating remarks from Mr. DeMocker, Detective McDormett repeated that "[h]e
26 was riding his bike basically across the street from his wife's neighborhood. He
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1 admitted that.” (GJ52:3-4). A fourth reference from the Detective was that “Mr.
2 DeMocker later told us he was on a mountain bike right in that area ...” (GJ18:17-18).

3 In fact, Mr. DeMocker told investigators that he was riding his bike on Granite
4 Trail which is at its closest 1.5 miles from the victim’s neighborhood, and during part of
5 the ride, over 10 miles away from the victim’s neighborhood. It is not “across the
6 street” and Mr. DeMocker did not say he was riding his bike across the street from the
7 victim’s home. In addition to these falsehoods about the location of the ride, there is no
8 offshoot point towards Glenshandra from Granite Trail, as represented by Detective
9 McDormett. This testimony falsely put Mr. DeMocker in the area of the crime and also
10 falsely represented that he “admitted” he was near the crime. This is the only evidence
11 presented of Mr. DeMocker’s proximity to the scene and it is false.

12 In addition to this misleading testimony, Detective McDormett also told the
13 grand jury that Mr. DeMocker “gave differing times” for the end of his bike ride, “[h]e
14 said 9:00 p.m., 9:30 p.m. or as it was getting dark. Sunset on July 2nd was I believe
15 approximately 7:46 p.m.” (GJ22:6-8). However, Mr. DeMocker provided consistent
16 testimony throughout seven interviews. He said he got back to his car around 9:30
17 (Bates No. 001782), that it was close to being dark when he got back to his car, (Bates
18 No. 001817), but that it was not yet dark (Bates No. 001816). Detective Brown repeats
19 twice during the interviews that Mr. DeMocker left the trail at 9:30 (Bates No. 001837),
20 and that his car was parked at the trail until 9:30 (Bates No. 001841). Furthermore,
21 suggesting there is a conflict between sunset being at 7:46 and it just getting dark at
22 9:00 or 9:30 is misleading as sunset is not when it gets dark, particularly in the summer
23 months. For example, fireworks were set off in Prescott two days later, not starting
24 until 9:00. See
25 <http://www.cityofprescott.net/events/index.php?year=2008&month=7&id=1723>.

1 Additionally, the detectives failed to tell the grand jury of their cursory and
2 misguided attempt before dawn on the day after the murder to find tracks where Mr.
3 DeMocker said he was actually riding, including the fact that they went to the wrong
4 starting point and could not find the obvious single track bike trail that would likely
5 have produced the real tracks from Mr. DeMocker's bike.

6 Mr. Ainley knew of the misleading character of all of this testimony and violated
7 his duty by failing to correct it. *See Napue*, 360 U.S. at 269. In such circumstances an
8 Arizona appeals court has held that a denial of substantial due process necessarily
9 results from such conduct and remand for a new determination of probable cause is
10 required. *Nelson*, 137 Ariz. at 277, 660 P.2d at 1354; *see also Maretick v. Jarrett*, 62
11 P.3d 120.

12
13 **8. Misleading Information About Mr. DeMocker's Statements On**
14 **Learning of the Victim's Death Require Remand.**

15 Detective McDormett and Mr. Ainley made several false and misleading
16 statements about Mr. DeMocker's statements upon learning of the victim's death that
17 require remand. Detective McDormett testified that Mr. DeMocker having "just learned
18 within about an hour of this interview that the mother of his children were [sic] dead"
19 ... "asked if the interview could be quick because he had to go to work in the morning."
20 (GJ21:12-16). This was repeated by Detective McDermott again in response to a grand
21 juror question. (GJ52:22-25). However, Mr. DeMocker never said he wanted to make it
22 quick and Detective McDermott's testimony was false and misleading to the grand jury.
23 Police reports of the interviews with Mr. DeMocker, and transcripts of the same,
24 indicate that Mr. DeMocker explained that he was covering his office alone the next day
25 and asked if the interview was going to be an all night interview. (Bates No. 1913). He
26 asked if they could complete the interviews the following day and explained that he
27 wanted to be cooperative but works on New York time because of his job and is very
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1 multiple interviews on the night of the victim's death and the subsequent interview
2 conducted at the time of his arrest. Although he presented false and prejudicial
3 testimony about Mr. DeMocker's statements, Detective McDormett failed to tell the
4 grand jury of Mr. DeMocker's multiple consistent exculpatory statements.

5 Mr. Ainley violated his "duty of good faith ... with respect to the court, the grand
6 jury and the defendant." *Nelson*, 137 Ariz. at 276, 669 P.2d at 1353. Incumbent in that
7 duty is the obligation to correct false testimony. *See Napue*, 360 U.S. at 269. Here, Mr.
8 Ainley not only failed to correct it, but sought to perpetuate and aggravate the false and
9 misleading testimony. This necessarily resulted in a denial of substantial due process
10 and requires a remand for a new determination of probable cause. *Nelson*, 137 Ariz. at
11 277, 660 P.2d at 1354; *see also Maretick*, 204 Ariz. at 198, 62 P.3d at 124.

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13 **9. Remand is Required Because Unsupported Theories Were Presented**
14 **to the Grand Jury as Fact.**

15 The grand jury testimony is replete with gross speculation with no basis in fact or
16 evidence, and often in direct contradiction to the available evidence. This testimony
17 was specifically elicited by Mr. Ainley. A sampling of this rank speculation presented
18 as fact was as follows:

- 19 1. Because the victim had defense wounds on her right arm, the attacker
20 attacked her from the left side. (GJ30:5-12). This is inconsistent with Dr.
21 Fulginiti's report that significant injuries were also found to the left side of
22 the victim's head, (Bates No. 549), which was not shared with the grand jury;
- 23 2. The severity of the injuries suggest a person who is showing rage (GJ30:15-
24 19);
- 25 3. Rage suggests there is a relationship between the victim and attacker
26 (GJ30:19-20);

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4. It's a reasonable assumption that the victim was attempting to talk to or reason with her attacker because her defensive wounds were only found on her front. (GJ31:2-5). This is contrary to the facts as the Autopsy Report indicates that there were two abrasions on the posterior left shoulder overlying the scapula, (Bates No. 554 & 556), a fact which was not shared with the grand jury;
 5. When asked by a grand juror if a golf club, the alleged weapon, would still be intact after the trauma the State asserted it had inflicted, Detective McDermott responded "[o]ne of our guys ... is very familiar with golfing and golf clubs. He plays all the time, and in fact was a semipro baseball player. ... "[H]e didn't seem to think that wouldn't [sic] be a problem and neither did Dr. Keen or Dr. Fulginiti." (GJ49:10-22). There is nothing in either Dr. Keen or Dr. Fulginiti's report addressing this question, nor any reason to think they, or "one of our guys" who plays golf, would be able to answer this question with any authority. Additionally, Dr. Fulginiti told detectives that other possible weapons should be tested, (Bates No. 1939), and this was not shared with the grand jury;
 6. Although police reports indicate that Karen Gere with the Medical Examiner's Office notified detectives on August 4, 2008, over two months before the grand jury testimony, that although the clippers were not single use, "they would usually clean them after being used," (Bates No. 001941), Detective McDormett told the grand jury of unknown male DNA found under the victim's fingernails, "those clippers were not sterilized." (GJ42:14-20).
 7. Despite acknowledging that the forensic accounting was incomplete and that the department was still going through records, Detective McDormett testified that "[o]ur understanding is that Mr. DeMocker was in debt."

1 (GJ33:19-21). Upon questioning from a grand juror about why there are no
2 financial reports on Mr. DeMocker, McDormett later admits "we are still
3 looking into that aspect of it," (GJ57:16-18), but followed up by stating that
4 forensic accounting "would indicate Mr. DeMocker led a very extravagant
5 lifestyle" referencing non-existent "escort services" (see below). Detective
6 Brown also testified that there was evidence from a forensic accountant that
7 money was being hidden by Mr. DeMocker, (GJ67:7-9);

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8. When asked by a grand juror about the dogs barking, Detective McDermott stated "[w]e believe Mr. DeMocker was in the laundry room and had gotten into the house while Carol was out for her run." (GJ54:21-24). There is no evidence to support this and the fact that the State fails to identify the unknown male DNA on the light-bulbs that were allegedly unscrewed in the laundry room further distorts this evidence;
 9. Detective McDermott testified that it was "highly unlikely that [the victim] would be screening calls and neglecting to contact these people or at least answer the phone and say, hey, I'm okay," (GJ24:19-22), there is no evidence about the victim's propensity to answer calls and, in fact, there is some evidence to the contrary.

Again, presentation of this evidence is a clear violation of the State's duty to present an unbiased and impartial presentation of the evidence to the grand jury.

Remand is required to address these multiple violations.

10. Incorrect Information about Mr. DeMocker's Miranda Rights Require Remand.

Detective McDormett testified to the grand jury that he believed, but was not sure, that Mr. DeMocker was read his Miranda rights when he was interviewed on the night of the victim's death. (GJ21:3-5). Mr. DeMocker was not read his Miranda rights

1 at the outset of the first interview. This is significant because Detective McDermott
2 repeats several times that Mr. DeMocker made admissions during this interview.
3 Detective McDermott repeated of Mr. DeMocker “[h]e admitted that” in discussing
4 (incorrectly) where Mr. DeMocker was riding his bike on the night of the murder.
5 (GJ52:4). The grand jury was focused on Mr. DeMocker’s statements and a member of
6 the grand jury asked what incriminating remarks he made; inquiring “was there
7 anything that law enforcement was able to get out of him ... before he was able to get
8 an attorney?” (GJ50:10-14). The information that Mr. DeMocker had been read his
9 Miranda rights when he had not been read his rights, violated the duty of good faith Mr.
10 Ainley has to correct false testimony. *See Napue*, 360 U.S. at 269. Remand is required
11 for a new determination of probable cause to address this violation. *Nelson*, 137 Ariz. at
12 277, 660 P.2d at 1354; *see also Maretick*, 208 Ariz. at 198, 62 P.3d at 124.

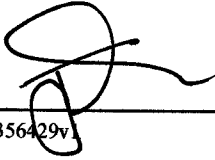
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14 **11. Misleading Information About Victim’s Associates Requires Remand.**

15 The State also provided false and misleading testimony to the grand jury about
16 the victim’s associates. When asked by a grand juror if the victim had any other
17 relationships, (GJ65:19-20), Detective Brown indicated she had one boyfriend,
18 (GJ65:21-23). The State knew that the victim had multiple relationships and failed to
19 disclose this when directly asked by a grand jury member. This was yet another
20 violation of the State’s duty to correct inaccurate information and a further violation of
21 Mr. DeMocker’s due process rights.

22 **12. False Information About Mr. DeMocker’s Date of Arrest Requires**
23 **Remand.**

24 Detective McDermott incorrectly testified to the grand jury that Mr. DeMocker
25 was arrested on August 24, 2008. (GJ36:4-5). In fact, Mr. DeMocker was arrested on
26 October 23, almost two months to the day after the date the grand jury was told he was
27 arrested. This is particularly prejudicial because Mr. Ainley also elicited testimony that

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